IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WA.No. 399 of 2000

AGAINST THE JUDGEMENT DATED 2.2.1999 IN OP.6917/1990
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APPELLANT/3RD RESPONDENT:

THE WELFARE FUND INSPECTOR,
KERALA TODDY WORKERS WELFARE FUND
BOARD, KOTTAYAM.

BY SRI.A.K.JOHN, STANDING COUNSEL, KTWWF BOARD

RESPONDENTS/PETITIONERS & RESPONDENTS 1,2,4 & 5:
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1. K.N.MADHAVAN, KUNNEL HOUSE (DIED)
KULATHOOR PRAYAR,
VELLAVOOR VILLAGE.

2. V.K.VIJAYAKUMAR, PANACKAPATHALIL,
KADAYANIKKAD KARA, VELLAVOOR VILLAGE.

3. P.N.GOPINATHAN, VADACKEL, THAZHATHU
VADAKARA P.O., VELLAVOOR VILLAGE.

4. THE STATE OF KERALA, REPRESENTED BY THE
CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

5. THE COMMISSIONER & SECRETARY, LABOUR DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

6. DEPUTY TAHSILDAR (RR), TALUK OFFICE,
CHANGANACHERRY.

7. KRISHNAN SREEDHARAN, PARAYIL HOUSE, KILIROOR P.O.
THIRUVARPPU VILLAGE, ALSO HAVING THE ADDRESS
KRISHNAN SREEDHARAN, MAMOOTTIL (PULICHUVATTIL)
PUZHAVATHU, CHANGANACHERRY.

ADDL. 8. AZHAKAN (KUTTAI), KUNNEL HOUSE, KULATHOOR
PRAYAR, VELLAVOOR VILLAGE, KOTTAYAM.

9. SHEELA, KUNNEL HOUSE, KULATHOOR
PRAYAR, VELLAVOOR VILLAGE, KOTTAYAM.

10. SATHEESH, KUNNEL HOUSE, KULATHOOR
PRAYAR, VELLAVOOR VILLAGE, KOTTAYAM.

11. SAJINI, KUNNEL HOUSE, KULATHOOR
PRAYAR, VELLAVOOR VILLAGE, KOTTAYAM.

(ADDL.RESPONDENTS 8 TO 11 ARE IMPLEADED AS LEGAL REPRESENTATIVES OF DECEASED 1ST RESPONDENT AS PER ORDER DATED 5.7.2006 IN I.A.NO.477/2006)

R4 TO R6 BY SR.GOVERNMENT PLEADER SMT.MEERA
SRI.JAGADEESACHANDRAN NAIR.K.
R7 BY SRI.K.GOPALAKRISHNA KURUP
R2 BY SRI.C.S.MANILAL

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.399 of 2000

Dated, this the 28th day of June, 2007

JUDGMENT

K.T.Sankaran, J.

The third respondent in O.P.No.6917 of 1990 is the appellant in this writ appeal.

2. The writ petition was filed by respondents 1 to 3 herein praying for the issue of a writ of certiorari to quash Exts.P1 and P5 orders. Ext.P1 is an order dated 28.4.1989 passed by the Toddy Workers Welfare Fund Inspector, Kottayam. Ext.P5 is the order dated 16.5.1990 passed by the Government on appeal from Ext.P1 order.

3. In the writ petition, the petitioners, inter alia, have raised the following grounds:

> "E. The Welfare Fund Inspector has failed to verify the payment register, muster roll and the pass books issued to the workers. Without a clear verification of these records it is not possible to find out the real facts. It is seen that one of the employees, Karunakaran has given evidence on 5.7.1987 that the toddy shop was conducted by the licensee himself and there is no reason to disbelieve him.
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> F. The only contrary evidence is stated to be a joint statement made by 5 persons. No separate statement has been recorded from each person and so it is not possible to ascertain which of them has given the alleged version; no opportunity was given to contradict the statement purportedly made by any particular person. Under Section 8 the Welfare Fund Inspector has the authority to take evidence on oath and if a proper judicial enquiry was conducted he could have satisfied himself that the licensee himself conducted the toddy shop as employer and no other person will come within the definition of employer in the act."

4. The learned Single Judge held that an opportunity was not afforded to the writ petitioners to cross examine Sugathan, Raghavan, Sasi, Sreedharan and Ravindranath who made the joint statement stating that the petitioners were involved in the conduct of business. It was held thus in the judgment:

> "It is also relevant to note that at the time when the first notice was issued to the licensee to remit the contribution towards welfare fund, the licensee had no case that the shop was conducted by the petitioners. When it is alleged that the petitioners are employers there must be evidence to show that they were conducting the shops. The learned

> Government Pleader submitted that the joint statement submitted by Sugathan, Raghavan, Sasi, Sreedharan and Ravindranath, who were the workers of the shop, stands unchallenged. From the files it is seen that the petitioners were not given an opportunity to cross-examine these persons."

5. On the finding that no opportunity was given to cross examine the persons who made a statement against the petitioners, the learned Single Judge ought to have set aside Exts.P1 and P5 orders and remanded the case to the primary authority, namely the Welfare Fund Inspector. Exts.P1 and P5 orders were passed on the basis of conclusions arrived at on facts. When the Court finds that an effective opportunity to cross examine certain persons, whose statements were taken into account for arriving at the conclusion, was not granted, the only course open is to set aside the orders impugned and remand the case for fresh disposal by the Welfare Fund Inspector.

6. On a careful analysis of Exts.P1 and P5 orders, the pleadings and the judgment of the learned Single Judge, we are of the view that it would be quite appropriate to set aside Exts.P1 and P5 orders and to remand the case to the Welfare Fund Inspector for fresh disposal after allowing the petitioners to cross-examine the persons who gave statement and also affording an opportunity of being heard to them. Petitioners in the writ petition would be entitled to put forward all their contentions on facts and in law before the Welfare Fund Inspector.

The writ appeal is allowed as above.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns